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PTO/SB/21 (09-04)

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TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	09/822,064
	Filing Date	03/30/2001
	First Named Inventor	David F. Mears
	Art Unit	2686
	Examiner Name	Iqbal, Khawar
Total Number of Pages in This Submission	Attorney Docket Number	068448-174

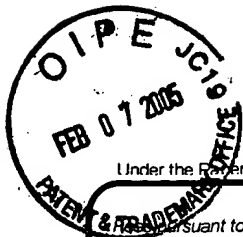
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<input checked="" type="checkbox"/> Fee Transmittal Form <input checked="" type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): 1. Postcard
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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm Name	Beusse Brownlee Wolter Mora & Maire, P.A.		
Signature			
Printed name	Enrique J. Mora		
Date	February 3, 2005	Reg. No.	36,875

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Signature			
Typed or printed name	Grayce A. Lichtenberger	Date	February 3, 2005

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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Pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

FEE TRANSMITTAL
For FY 2005☐ Applicant claims small entity status. See 37 CFR 1.27**TOTAL AMOUNT OF PAYMENT** (\$) **500.00****Complete if Known**

Application Number	09/822,064
Filing Date	03/30/2001
First Named Inventor	David F. Mears
Examiner Name	Iqbal, Khawar
Art Unit	2686
Attorney Docket No.	068448-174

METHOD OF PAYMENT (check all that apply)☒ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____☐ Deposit Account Deposit Account Number: _____ Deposit Account Name: _____

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☐ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee☐ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17 ☐ Credit any overpayments**WARNING:** Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**FEE CALCULATION****1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	_____
Design	200	100	100	50	130	65	_____
Plant	200	100	300	150	160	80	_____
Reissue	300	150	500	250	600	300	_____
Provisional	200	100	0	0	0	0	_____

2. EXCESS CLAIM FEES

Fee Description	Fee (\$)	Small Entity Fee (\$)
Each claim over 20 or, for Reissues, each claim over 20 and more than in the original patent	50	25
Each independent claim over 3 or, for Reissues, each independent claim more than in the original patent	200	100
Multiple dependent claims	360	180

Total Claims	Extra Claims	Fee (\$)	Fee Paid (\$)	Multiple Dependent Claims	Fee (\$)	Fee Paid (\$)
- 20 or HP = _____	x _____	= _____				
HP = highest number of total claims paid for, if greater than 20						
Indep. Claims	Extra Claims	Fee (\$)	Fee Paid (\$)			
- 3 or HP = _____	x _____	= _____				
HP = highest number of independent claims paid for, if greater than 3						

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper, the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
- 100 = _____	/ 50 = _____	(round up to a whole number) x _____	= _____	

4. OTHER FEE(S)

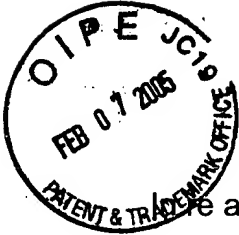
Non-English Specification, \$130 fee (no small entity discount)

Other: **Filing a brief in support of an appeal****Fees Paid (\$)****500.00****SUBMITTED BY**

Signature		Registration No. (Attorney/Agent) 36,875	Telephone 407-926-7705
Name (Print/Type)	Enrique J. Mora		Date February 3, 2005

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of:

Applicants: David F. Mears, *et al.*

Examiner: Iqbal, Khawar

Serial No.: 09/822,064

Filed: 03/30/2001

Group Art: 2686

Atty. Docket: 068448-174

For: Parasitic Radio Transmission System

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APPELLANT'S BRIEF UNDER 37 CFR 41.10

This brief is in furtherance of the Notice of Appeal filed in this application on December 3, 2004.

1. REAL PARTY IN INTEREST - 37 CFR 41.37(c)(1)(i)

The real party in interest in the present Appeal is the assignee of record of the present application, Com-Net Ericsson Critical Radio Systems, Inc, or any successor to said corporate assignee.

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2. RELATED APPEALS AND INTERFERENCES - 37 CFR 41.37(c)(1)(ii)

To the best of our knowledge, there is no other appeal, interference or judicial proceeding that is related to or that will directly affect, or that will be directly affected by, or that will have a bearing on the Board's decision in this Appeal.

3. STATUS OF CLAIMS - 37 CFR 41.37(c)(1)(iii)

Claims cancelled: 17.

Claims withdrawn but not cancelled: none.

Claims pending: 1-16 and 18-22.

Claims allowed: none.

Claims rejected: 1-16 and 18-22.

Claim rejections appealed: 1-16 and 18-22.

4. STATUS OF AMENDMENTS - 37 CFR 41.37(c)(1)(iv)

There is no amendment filed subsequent to final rejection. However, Appellant notes the existence of a typographical error in connection with claim 18 that shows dependency from claim 17, a cancelled claim. The proper dependency of claim 18 should be from claim 5. For purposes of this appeal, this error has no bearing but should be corrected upon allowance of claims.

5. SUMMARY OF CLAIMED SUBJECT MATTER- 37 CFR 41.37(c)(1)(v)

The present invention generally relates to a trunk radio system. In a typical trunk radio system that is used by emergency and public service organizations, the capacity of that system to handle calls is generally over specified, i.e., the number of channels or frequencies designed in the system is greater than the expected number of simultaneous users of the trunk radio system. See paragraph 8 of the publication document for the present application. This characteristic increases the likelihood that no calls for user service will be blocked due to channel unavailability. Since the channel capacity of the system is over specified, at any given time, one may find some frequencies

or channels that are not in use by the system. The present invention is specifically intended to utilize these unused channels to carry communications from sources outside the emergency and public service organizations. These outside users comprise relatively low priority digital data services that are described in applicant's specification as *parasitic users*, i.e., users who can utilize available channels or frequencies in the system when those channels or frequencies are not otherwise being required by the traditional system users. See for example paragraph 11 of the publication document for the present application. It is specifically noted that because these are outside users, any traditional user of the trunked communication system, i.e., the emergency or public service users, have priority over the parasitic users. Thus, this system as described and claimed by applicant is not just directed to functions within the normal user configuration of trunk radio systems. In applicant's invention, any traditional member of the emergency or public safety group has higher priority relative to the parasitic users and can interrupt any transmission that is being utilized to transmit what applicant has described as *parasitic data* from outside resources.

6. GROUNDS OF REJECTION TO BE REVIEWED UPON APPEAL -

37 CFR 41.37(c)(1)(vi)

A) Claims 1-16 and 18-22 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Pat. No. 5,638,055 (McDonald et al).

7. APPENDICES

A copy of the claims 1-16 and 18-22 involved in this appeal is attached as a claims appendix under 37 CFR 41.37(c)(1)(viii). No evidence appendix under 37 CFR 41.37(c)(1)(xi) or related proceedings appendix under 37 CFR 41.37(c)(1)(x) is required.

8. ARGUMENT 37 CFR 41.37(c)(1)(vii)

A) Rejection of claims 1- 16 and 18-22 under 35 U.S.C. §102(e) as being anticipated by U.S. Pat. No. 5,638,055 (hereinafter referred to as McDonald).

Appellant argues that McDonald does not support a *prima facie* case of anticipation for claims 1-16 and 18-22 because McDonald fails to teach each of the claimed elements and/or operational relationships. With regard to the rejections applied against claims 1-16 and 18-22, it is appellants' belief that not all of the rejected claims stand or fall together. More specifically, apparatus claims 1-16, and 18, stand together. However, claims 19-22, directed to a method for operating a trunked radio repeater system, should be grouped separately from claims 1-16, and 18 for purposes of this appeal.

The test for establishing a *prima facie* case of anticipation under §102 "requires the presence in a single prior art reference of each and every element of the claimed invention, arranged as in the claim." (Lindemann Maschinenfabrik GmbH v. American Hoist and Derrick Co., 730 F.2d 1452, 221 USPQ 481,485 (Fed. Cir. 1984)). Furthermore, "there must be no difference between the claimed invention and the referenced disclosure, as viewed by a person of ordinary skill in the field of the invention." Scripps Clinic and Research Found. v. Genentech Inc., 927 F.2d 1565, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991)). Absence from the reference disclosure of any claim element and/or operational interrelationship negates anticipation under §102.

A.1) With regard to claims 1-4, independent claim 1 is directed to a communications system 40 for transmitting information signals to a first plurality of receivers 42 upon request, and for transmitting parasitic data to a second plurality of receivers 44. The communications system comprises a transmitter 100 for transmitting an information signal to at least one of the first plurality of receivers on an assigned frequency selected from among a plurality of available frequencies, in response to a request to transmit received from a user of the communications system. The communications system further comprises a controller 126 coupled to the transmitter for transmitting parasitic data to at least

one of the second plurality of receivers on a heretofore unoccupied frequency selected from among the plurality of available frequencies, and wherein the parasitic data transmission is interrupted if the selected frequency is required for transmitting an information signal to one of the first plurality of receivers.

The Examiner relies on McDonald to reject claim 1 under 35 U.S.C. §102. McDonald is directed to a trunked communications system configured to perform a method to enable users of the communication system to control which communication unit sources audio at any one time in a user group. See column 2, lines 43-46. McDonald discloses three modes of operation that can be utilized in the trunk radio system. The first mode of operation prohibits interruption of a user that is already talking on a channel. In a second mode of operation, the system allows any user to interrupt a person talking on a given channel to interject comments or other information. McDonald describes the second mode of operation as being similar to a normal conversational mode in which individuals routinely interrupt each other to take control of a conversation. In a third mode of operation, McDonald describes a hierarchy system that allows the system administrator to establish priority regarding a channel being used, based upon a predefined hierarchy within the user groups. In this mode, a supervisor might have ultimate priority so that the supervisor could interrupt any other person that is talking on the given channel.

It is submitted that McDonald addresses a different problem than the one addressed by the present invention. McDonald describes priority techniques regarding the utilization of a given channel being presently used by the traditional users of a trunked radio system. The problem addressed by McDonald presumes that there is a user group that is already utilizing a given channel for communication so that if one user has control of the given channel, no one else could talk on that channel. McDonald discloses priority modes for user groups competing for a given channel that is presently being used. By way of comparison, the system of the present invention makes use of the overall channel or frequency redundancies to enable utilization by low priority users of a presently unused channel or frequency. Channel or frequency redundancies

refer to the fact that the system has a higher number of channels relative to the anticipated number of simultaneous users so that at any given time some of the channels may be available. This is different from setting priority modes regarding a channel that is being presently utilized by a traditional user, as is disclosed by McDonald.

It is submitted that the Examiner's characterization of parasitic data as being analogous to an emergency transmission is incorrect. The term "parasitic data" is used by applicant throughout the specification to mean data that is allowed to use the radio system only if and when there are available free channels. It is accurate that when the system of the present invention transmits an information signal to the first plurality of receivers on an assigned frequency selected from a plurality of available frequencies, this would be a classical function for the transmission of audio on a trunked radio system. However, McDonald does not teach or suggest structure for transmitting parasitic data to a second plurality of receivers using an unoccupied frequency. It is recognized that McDonald describes in one of the modes the ability to interrupt a frequency that is being used in order to take control of that frequency by someone having a higher priority than the present user of that system. While this feature alone may arguably sound similar regarding some aspects of applicant's claimed invention, there is nothing in McDonald that suggests that one could transmit parasitic data to a second plurality of receivers on one of the unoccupied frequencies that is likely to exist at any given time in the trunked radio system. Accordingly, it is not believed that there is any description or suggestion in McDonald that meets the structural and/or operational relationships set forth in appellant's claim 1. Anticipation under 35 U.S.C. §102 requires that "The identical invention must be shown in as complete detail as contained in the ...claim." (In re Bond, 910 F.2d 831, 15USPQ2d 1566 (Fed. Cir. 1990)). Accordingly, it is submitted that McDonald fails to anticipate or otherwise render unpatentable claim 1. Thus, the rejection of claims 1-4 under 35 U.S.C. §102(e) is not supported by the cited art and should be reversed.

A.2) With regard to independent claim 5 and any dependent claims therefrom, it is reiterated that McDonald does not describe any use of a trunked radio system for transmitting parasitic data to one or more of a plurality of parasitic receivers on an unoccupied working channel. Accordingly, it is not believed that there is any description or suggestion in McDonald that meets the structural and/or operational relationships set forth in appellant's claim 5. All of claims 1-16 and 18 include the reference to parasitic data. Accordingly, it is submitted that McDonald fails to anticipate or otherwise render unpatentable any of the foregoing claims and reversal of the rejections is requested.

A.3) With regard to claim 19, independent claim 19 is directed to a method for operating a trunked radio repeater system 40 having a control channel 54, 56 and plural working channels 50, 52, wherein the working channels are assigned for use by one or more of a first plurality of radios 42 as specified by a control signal carried on the control channel and assigned for use by a second plurality of radios 44 when not in use by one of the first plurality of radios. The method comprises operating one or more of the first plurality of radios on one of the plural working channels in response to an assignment signal carried on the control channel. The method further comprises determining when a working channel is unoccupied, and permitting operation of one or more of the second plurality of radios 44 on an unoccupied working channel until the working channel is assigned for use by the first plurality of radios.

In comparing the language set forth in claim 19 to what is described in McDonald, it is believed that McDonald is only directed to establishing mode priorities regarding a single channel that is being presently utilized by a user group. There is no discussion or suggestion in McDonald of either determining when a working channel is unoccupied or permitting operation by one or more of a second plurality of radios on the unoccupied working channel until the working channel is assigned for use by a first plurality of radios. Again McDonald is premised on assigning priorities regarding a channel that is being presently occupied not on the utilization of an unoccupied working channel. Therefore, determining whether a working channel is unoccupied is superfluous in

McDonald whereas in the present invention this step is a fundamental determination as to permitting operation by one or more of a second plurality of radios on the unoccupied working channel. Accordingly, it is not felt that McDonald describes or suggests utilization of redundancies in a plurality of working channels so that some of the working channels can be used by a second plurality of radios so long as such channels are not required for use by a first plurality of radios. Thus, McDonald fails to meet the Section 102(e) requirements for the rejection of claim 19 and as a result the rejection of claims 19-22 under 35 U.S.C. §102(e) is not supported by McDonald and should be reversed. Appellant further submits that McDonald does not render claims 19-22 unpatentable on any other basis.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Enrique J. Mora', is written over a horizontal line.

Enrique J. Mora, Esquire

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CLAIMS APPENDIX
37 CFR 41.37(c)(1)(viii)

1. A communications system for transmitting information signals to a first plurality of receivers upon request, and for transmitting parasitic data to a second plurality of receivers, said communications system comprising:

a transmitter for transmitting an information signal to at least one of the first plurality of receivers on an assigned frequency selected from among a plurality of available frequencies, in response to a request to transmit received from a user of said communications system; and

a controller coupled to said transmitter for transmitting parasitic data to at least one of the second plurality of receivers on a heretofore unoccupied frequency selected from among the plurality of available frequencies, and wherein the parasitic data transmission is interrupted if the selected frequency is required for transmitting an information signal to one of the first plurality of receivers.

2. The communications system of claim 1 wherein the parasitic data is transmitted in the form of digital data packets.

3. The communications system of claim 1 comprising a trunking system, wherein each of the first plurality of receivers includes a transmitting apparatus, and wherein a user of one of the first plurality of receivers requests a frequency assignment over which the information signal is transmitted from the requesting user to at least one other of the first plurality of receivers.

4. The communications system of claim 3 wherein the users of the first plurality of receivers provide public services.

5. A trunked radio repeater system including a trunked radio repeater and a plurality of portable radios for communicating bi-directionally with each other via said trunked radio repeater, wherein the trunked radio repeater system further includes plural working channels, said trunked radio repeater system further including a plurality of parasitic receivers operating on a secondary basis to the plurality of portable radios, said trunked radio repeater system comprising:

a first controller for receiving a request from one of the plurality of portable radios to transmit an information signal to at least one other of the plurality of portable radios, and in response thereto for assigning a working channel to carry the information signal;

a second controller responsive to said first controller for transmitting parasitic data to one or more of the plurality of parasitic receivers on an unoccupied working channel; and

when the first controller assigns a working channel that is in use transmitting parasitic data, the first controller terminating the parasitic data transmission and transmitting an information signal on the working channel.

6. The trunked radio repeater system of claim 5 wherein the working channel includes an inbound frequency for carrying the information signal inbound from the requesting portable radio to the trunked radio repeater, and includes an outbound frequency for carrying the information signal from the trunked radio repeater to one or more of the plurality of portable radios.

7. The trunked radio repeater system of claim 5 including an inbound and an outbound control channel, wherein the request to transmit is carried over said inbound control channel and wherein the first controller transmits a signal to at least one of the plurality of portable radios on said outbound control channel, and wherein said signal identifies the working channel for carrying the information signal.

8. The trunked radio repeater system of claim 5 wherein each one of the plurality of parasitic receivers includes a transmitter for transmitting a parasitic signal to the trunked radio repeater.

9. The trunked radio repeater system of claim 8 wherein a signal is transmitted from the trunked radio repeater to at least one of the plurality of parasitic receivers, wherein said signal assigns a working channel on which the parasitic receiver can transmit to the trunked radio repeater.

10. The trunked radio repeater system of claim 9, including an outbound control channel for carrying the signal assigning the working channel assignment.

11. The trunked radio repeater system of claim 9 wherein each working channel includes an inbound frequency and an outbound frequency, and wherein the inbound frequency to be used for transmitting to the trunked radio repeater from one of the plurality of parasitic receivers is the inbound frequency of the working channel on which the parasitic receiver last received parasitic data.

12. The trunked radio repeater system of claim 5 wherein the second controller transmits an outbound frequency assignment signal to at least one of the plurality of parasitic receivers, in response to which the at least one parasitic receiver tunes to the assigned outbound frequency and thereafter receives the parasitic data on the assigned outbound frequency.

13. The trunked radio repeater system of claim 5 wherein the parasitic data includes address information, wherein each one of the plurality of parasitic receivers has an address, wherein the parasitic data is transmitted to all of the plurality of parasitic receivers, but only the parasitic receiver having an address matching the address information in the parasitic data responds to the parasitic data.

14. The trunked radio repeater system of claim 5 wherein the parasitic data is transmitted in the form of digital data packets.

15. The trunked radio repeater system of claim 5 wherein the parasitic data is broadcast to all of the plurality of parasitic receivers on a predetermined channel, and wherein the parasitic data includes a header portion identifying the one or more of the plurality of parasitic receivers for which the parasitic data is intended.

16. The trunked radio repeater system of claim 5 wherein each one of the plurality of parasitic receivers scans the working channels searching for parasitic data.

17. (Cancelled)

18. The trunked radio repeater system of claim 17 wherein the termination of the parasitic data transmission before completion thereof causes the parasitic data to be stored and transmitted at a later time.

19. A method for operating a trunked radio repeater system having a control channel and plural working channels, wherein the working channels are assigned for use by one or more of a first plurality of radios as specified by a control signal carried on the control channel and assigned for use by a second plurality of radios when not in use by one of the first plurality of radios, said method comprising:

operating one or more of the first plurality of radios on one of the plural working channels in response to an assignment signal carried on the control channel;

determining when a working channel is unoccupied; and

permitting operation of one or more of the second plurality of radios on an unoccupied working channel until the working channel is assigned for use by the first plurality of radios.

20. The method of claim 19 wherein when one of the second plurality of radios is operating on a working channel and it is determined that the working channel is required by one of the first plurality of radios, terminating use of the working channel by the one of the second plurality of radios.

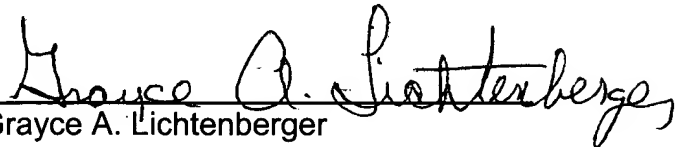
21. The method of claim 19 wherein operation of the second plurality of radios includes receiving parasitic data.

22. The method of claim 21 wherein in response to termination of the working channel by the one of the second plurality of radios, the information is being transmitted thereby retransmitted at a later time.



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